

# COMMUNICATIONS ADVISORY COUNSEL LLC

2154 Wisconsin Avenue N.W.  
Washington, D.C. 20007

Tel. 202-333-1770  
Fax 202-333-5274

**Stephen G. Kraskin**  
[skraskin@Independent-Tel.com](mailto:skraskin@Independent-Tel.com)

April 24, 2008

**Via Electronic Filing**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

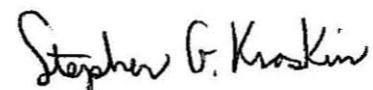
**Re: Notice of Ex Parte Presentation in WC Docket No. 07-135, Establishing Just and Reasonable Rates for Local Exchange Carriers**

Dear Ms. Dortch:

On behalf of the Rural Independent Competitive Alliance ("RICA"), Rick Vergin, David Cosson and I met today with Dana Shaffer, Randy Clarke, Albert Lewis, Deena Shetler, Doug Slotten, Victoria Goldberg, Marcus Maher, Lynne Engledow, and Jay Atkinson of the Wireline Competition Bureau. We discussed the attached June 21, 2007, Resolution of the RICA Board of Directors "Urging FCC Action To Address Allegations Related To Generation Of Access Usage" and the positions of RICA previously addressed in comments filed in this proceeding.

We also addressed the response of RICA to the proposals of other parties to this proceeding. Our discussion was based on the attached handout.

Sincerely,



Stephen G. Kraskin

**Attachments**

cc: Dana Shaffer  
Randy Clarke  
Albert Lewis  
Deena Shetler  
Doug Slotten  
Victoria Goldberg  
Marcus Maher  
Lynne Engledow  
Jay Atkinson



**Resolution of the Board of Directors  
June 21, 2007  
Urging FCC Action To Address Allegations Related To  
Generation of Access Usage**

Whereas, RICA's advocacy resulted in the establishment of the FCC's Rural CLEC access charge rules which ensure that competitive rural carriers have an opportunity to recover a rational level of their costs from charges for interconnection to their networks, similar to the rate design and cost recovery mechanisms established for incumbent rural carriers; and

Whereas, the entire regulated interconnection framework is under scrutiny and reevaluation in FCC Docket No. 01-92 wherein numerous industry members have proposed that all interconnection to be based on "bill and keep," a result that would be detrimental to the efforts of RICA members and other carriers committed to the provision of services in the rural areas of the nation; and

Whereas, RICA is concerned that carriers and other entities engaging in business schemes to generate access revenues beyond the rational level of cost recovery intended by the FCC tarnish the value of the existing interstate interconnection framework, and could cause instability in the maintenance of rational interconnection charges including those charged by RICA members pursuant to the FCC's rural CLEC access charge rules;

BE IT RESOLVED, that RICA supports expedient action by the FCC to address any and all allegations of wrong-doing with respect to schemes involving the generation of inordinate levels of access revenues and urges the FCC to revise its rules to the extent necessary to prohibit all such schemes and to ensure that the FCC's rules maintain the intent of the FCC's underlying policy to provide rural carriers with a rational level of cost recovery from charges for interconnection to their networks.



## **RURAL INDEPENDENT COMPETITIVE ALLIANCE (RICA)**

**Ex Parte Presentation WC Doc. No. 07-135  
April 24, 2008**

### **RATIONAL RESPONSES TO ACCESS STIMULATION CONCERNS**

1. The RICA Board of Directors has publicly opposed "access pumping."
2. As noted in the Resolution, RICA seeks to "ensure that competitive rural carriers have an opportunity to recover a rational level of their costs from charges for interconnection to their networks, similar to the rate design and cost recovery mechanisms established for incumbent rural carriers."
3. RICA history on this issue – fought for members' right to collect appropriate level of access charges. Advocacy of rational policy for application to rural CLECs resulting in the "rural CLEC access charge rule."

Sec. 61.26(e) Rural exemption. Notwithstanding paragraphs (b) through (d) of this section, a rural CLEC competing with a non-rural ILEC shall not file a tariff for its interstate exchange access services that prices those services above the rate prescribed in the NECA access tariff, assuming the highest rate band for local switching. In addition to that NECA rate, the rural CLEC may assess a presubscribed interexchange carrier charge if, and only to the extent that, the competing ILEC assesses this charge.

4. RICA agrees that appropriate measures should be adopted to ensure that appropriate levels of access charges are maintained consistent with the rational access charge policies the Commission has adopted, including the underlying policy that supports the rural CLEC access charge rule. As noted in our Board resolution, RICA "urges the FCC to revise its rules to the extent necessary to prohibit all such schemes and to ensure that the FCC's rules maintain the intent of the FCC's underlying policy to provide rural carriers with a rational level of cost recovery from charges for interconnection to their networks."
5. RICA has reviewed the allegations of some parties (AT&T, Verizon and Qwest ex partes) that accuse rural CLECs of participation in access stimulation. It is important to RICA members that the FCC recognize that the facts presented by these parties do not

suggest that the allegations of wrongful practices are widespread. The practice is certainly not widespread among RICA members and the practice is not condoned by RICA.

6. We are aware of one RICA member that has been named as a “traffic pumping CLEC” by other parties. RICA recognizes that this does not alleviate the need for the Commission to act to limit wrongful access stimulation practices. RICA urges the Commission to undertake the adoption of actions that address the concern in a manner that does not disrupt the rational and appropriate public interest considerations served by the existing Rural CLEC Access charge rule – in other words, the “baby should not be thrown out with the bath water.”

7. In fact, RICA believes that the proposals by AT&T and others to address the access stimulation concerns may be workable with rational modifications:

A. AT&T proposes that rural CLECs should be required to report their access traffic and access lines quarterly.

RICA Response: The information is highly confidential and of competitive value. Neither AT&T nor any carrier needs this information to ensure that a rural CLEC is not engaging in traffic stimulation arrangements. AT&T and other carriers that are billed for access are aware of the amount of minutes they are billed. If and when they experience an inordinate increase in traffic, they can initiate an action to question the lawfulness of the carrier’s rates under existing rules. As noted below, RICA agrees with AT&T’s proposal to establish a trigger that would result in rate reductions for a tariff period when a benchmark number of minutes is reached.

B. AT&T proposes that a rural CLEC should “certify upon the filing of a tariff that they will not enter into any traffic pumping arrangement.” AT&T defines “traffic pumping arrangement” as one “in which the LEC becomes the net payor of the customer.”

RICA Response: RICA has no objection to a requirement of a certification that the carrier is not engaged in a traffic pumping arrangement. The definition, however, should specifically state that the prohibition applies only to payments to the customer bases on the stimulation of access services. As proposed in the AT&T ex parte, the prohibition could be misinterpreted. For example, an electric utility with a customer call center served by the CLEC may sell electrical service to the CLEC. The CLEC’s electric bill may be greater than the electric utility’s phone bill, thereby making the CLEC a “net payor of the customer.” Obviously the certification should not prohibit this situation and any certification rules should be more carefully crafted to address only revenues related to access stimulation.

C. AT&T proposes that “the practice of manipulating interconnection points to artificially inflate access charges is an unreasonable practice under Section 201(b).”

RICA Response: More care is needed in defining specifically what AT&T refers to when it states a concern with “manipulating interconnection points.” Facilities based carriers have facilities that serve their own networks with interconnection points available to other carriers. A LEC, under long-standing rules, may establish or designate its own tandem and provide connecting carriers with transport to each of its serving end offices. Alternatively, a carrier may choose to deploy facilities or use facilities of another carrier to reach a LEC’s serving end office switch. Under existing rules, RICA is not aware of what precisely AT&T refers to when it addresses “manipulating interconnection points.” RICA respectfully urges the Commission to obtain specific facts and ensure that rule changes proposed by AT&T do not unnecessarily alter long-standing rational practices or provide unwarranted advantage to any class of carrier. RICA is specifically concerned that AT&T’s concern with “manipulating interconnection points” may mean that AT&T seeks to foster a policy that would allow AT&T to dictate what tandems other carriers utilize. Specifically, RICA is concerned that AT&T’s proposal will require other carriers to utilize AT&T’s tandem and transport services. Under existing rules and regulations, each carrier may: 1) establish its own tandem to provide efficient access to each of its exchanges; 2) it may alternatively utilize a tandem of a connecting carrier such as AT&T; or 3) it may utilize the tandem and transport services of a competitive tandem and transport provider.

D. AT&T proposes that the Commission should issue a ruling declaring that “no small LEC may opt into the Commission’s current price cap rules absent express permission from the Commission.”

RICA Response: Under existing rules, a carrier cannot opt into price caps without the filing of a tariff subject to Commission rejection and participation of interested parties.

E. AT&T proposes that LECs commit to revise and reduce their tariff access rates “in the event that traffic exceeds specified thresholds. In the case of a rural CLEC, AT&T proposes that the threshold should be 2,000 access minutes per line per month.

RICA Response: RICA agrees with the establishment of benchmark triggers for rate revisions as a second best choice to RICA’s long-standing proposal that rural CLECs should establish access rates in accordance with their costs consistent with FCC rules applicable to the establishment of rural incumbent access rates. Should the FCC decide to establish triggers for rate revisions as proposed by AT&T, RICA suggests that the trigger should be clarified to clearly indicate that it is applicable to terminating access traffic. The access stimulation concerns exclusively address terminating traffic issues. The trigger proposal should also be clarified to indicate that the trigger is reached when in the aggregate, the terminating access exceeds a level that is equivalent to the threshold number of minutes per access line. Finally, RICA suggests that the trigger threshold should be 3,000 minutes per month per line and not the 2,000 minute threshold proposed by AT&T.